10108

Nos. 77. 78 and 79.

Petition for Rehearing.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Nos. 77 and 78.

THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

WIRT ADAMS, STATE REVENUE AGENT, ET AL.

And No. 79.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, APPELLANT,

vs.

WIRT ADAMS, STATE REVENUE AGENT, ET AL.

PETITION FOR REHEARING AND BRIEF IN SUPPORT OF SAME. ADDITIONAL AUTHORITIES.

FRANK A. CRITZ,
MARCELLUS GREEN,
R. C. BECKETT,
Attorneys for Appellees.

(17,432, 17,433, and 17,434.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-22-'01

Supreme Court of the United States

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vs.

WIRT ADAMS, STATE REVENUE AGENT, ET AL., APPELLEES.

ADDITIONAL AUTHORITIES TO ADD IN BRIEF IN SUPPORT OF PETITION FOR REHEARING.

On pages 7 to 8 of our brief in support of the petition for rehearing, we ask the court, in aid of our said brief, to the point that it is the proper practice in equity to dismiss a pure injunction bill at the next term after the refusal of

or dissolution of a temporary injunction, on motion, to add and examine—

Sauls *vs.* Freeman, 12 Am. St., 190, 199.
Same case, 24 Fla., 209.
Am. Live Stock Co. *vs.* Chicago, &c., 36 Am. St., 399, 400.
Same case, 143 Ills., 210.
Indian River, &c., *vs.* East Coast, &c., 29 Am. St., 276.
Burlington, &c., *vs.* Dey, 31 Am. St., par. 19, p. 498.
Same case, 82 Iowa, 312.
(3d ed.) 2 High on Injunctions, and notes 2, 3, and 5, page 1140, citing—
Wade *vs.* London, 30 La. Ann., 660.
Titus *vs.* McGee, 25 Ills., 257.
Withers *vs.* Denmead, 22 Md., 135.

See also where the bills were dismissed in—

Jamison *vs.* Dulaney, 74 Miss., 890, 891, 892.
Hurley *vs.* Levee Commrs., 76 Miss., 141, 142.

In these cases the motions to dismiss the bills were because "the sole object of said original bill was for an injunction, as therein shown, which injunction was by this court refused," and the decree of the court is "that said motion be, and the same is hereby, sustained."

Record in No. 77 (318), pp. 43, 44.
Record in No. 78 (319), pp. 133, 134.
Record in No. 79 (320), p. 56.

There were several grounds of the motions to discharge the temporary restraining orders and to refuse the injunc-

tions, some of which were non-Federal; and while it is true that the court refused the injunctions because it finds "that complainant has shown no right to invoke the jurisdiction of this court, and further being of opinion that this court has no jurisdiction," still our contention is, as shown in brief filed with the petition, that on appeal this is not confined to the grounds recited by the lower court, but this court must examine for itself and sustain the lower court if any ground of the motion is good, and that such being the case, it is impossible in the nature of things under the pleadings that the bills could have been dismissed for want of jurisdiction, it matters not who says so.

For motions and decrees in reference to the injunctions, see—

No. 77 (318), pp. 31, 32, 38, 39.
No. 78 (319), pp. 89, 128.
No. 79 (320), pp. 18, 19, 51.
Prayers of bills respectively pages 26, 33, 12.

Respectfully submitted.

MARCELLUS GREEN.
FRANK A. CRITZ.
R. C. BECKETT.

10111

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 319.

THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

WIRT ADAMS, STATE REVENUE AGENT, ET AL.

AFFIDAVIT OF WIRT ADAMS, SETTING UP THE DECREE OF THE STATE COURT SUBSEQUENT TO THIS APPEAL AS RES ADJUDICATA.

(17,433.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 3-8-1900

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 319.

ILLINOIS CENTRAL RAILROAD COMPANY,
APPELLANT,

vs.

WIRT ADAMS, STATE REVENUE AGENT, AND THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI ET AL., APPELLEES.

Affidavit of Wirt Adams Setting Up the Decree of the State Court Subsequent to this Appeal as Res Adjudicata.

Before me, L. B. Moseley, clerk of the circuit court of the United States for the southern district of Mississippi, this day personally appeared the within-named Wirt Adams, State revenue agent and appellee in the above-styled cause and well known to me as such, and, being by me first duly sworn, on oath states that he is such State revenue agent and appellee; that the court number of said suit was No.

560; that thereafter an appeal had been taken therein to the United States circuit court of appeals for the fifth circuit under said number 806 in that court; that after said appeal had been dismissed by said circuit court of appeals and before the bill was dismissed by said circuit court of the United States for the southern district of Mississippi, on May 1, 1899, and before this appeal was taken to this court he began a suit in the chancery court of Hinds county, first district, State of Mississippi, as said revenue agent, on April 25, 1899, for the recovery of the same identical taxes for the years 1886 to 1891, inclusive, on the identical property now in controversy in the bill in this suit, by the enforcement of the lien of said assessment made by said State Railroad Commission, as State railroad assessors, on August 2, 1898, the identical assessment sought to be enjoined in this suit; that appellant and Yazoo and Mississippi Valley Railroad Company and said State Railroad Commission were defendants to said suit and duly served with process therein; that appellant and Yazoo and Mississippi Valley Railroad Company on April 29, 1899, filed a petition and bond for the removal of said suit to the circuit court of the United States for the southern district of Mississippi on the ground that Federal questions were involved; that said petition was denied, on the ground that the cause was not removable in its nature, by said chancery court on May 8, 1899, and thereupon both of said defendants jointly answered the bill; that upon issues properly made in said suit the said chancery court, upon pleadings and proof, at the January special term, 1900, thereof, adjudged: 1, that as to the exemption or appropriation of taxes for the years 1886 to 1891, inclusive, on the said property, under said 21st section, extended to Natchez, Jackson and Columbus Railroad Company by act of August 8, 1870; that the said 21st section was unconstitutional and void *ab initio* under the constitution of 1869 of the State of Mississippi; 2, that if said exemption or appropria-

tion of taxes was valid, it was repealed by chapter 42, Acts of 1875, p. 66; 3, that chapter 11, Acts of 1878, p. 87, operated as a repeal of chapter 116, Acts of 1878, p. 233, purporting to re-enact said 21st section; 4, that said chapter 116, Acts of 1878, is unconstitutional and void under said constitution of 1869, and especially so because of the enactment of said chapter 11, Acts of 1878; 5, that, if then existent, said 21st section was repealed by chapter 10, Code 1880; 6, that it is doubtful if chapter 22, Acts of 1884, p. 29, re-enacted said exemption; but, if so, said chapter 22 was unconstitutional in this regard under said constitution of 1869; that if said chapter 22 re-enacted said exemption, or if said exemption was then existent, it was repealed by chapter 2, Acts of 1886, p. 23, and by chapter 2, Acts of 1890, p. 12; 7, that if said chapter 2, Acts of 1890, could be treated as recognizing said exemption as reinstated by said act of 1884, such recognition was unconstitutional and void under said constitution of 1869; 8, that the decision of the State Railroad Commission in making the assessment in controversy in August, 1898, was made both on the law and the evidence on regular hearing on notice, as appears from the pleadings and records in evidence therein, and that said decision was *res adjudicata* and established conclusively the liability of said property to taxation, and that said taxes had not been paid; 9, that the decisions of the supreme court of Mississippi in numbers 8629 and 9251 of that court on appeal from the circuit court of Hinds county in case number 2788, consolidated (being No. 244 of this court), are *res adjudicata*, and establish conclusively the liability of the property in controversy to taxation; 10, that said chancery court, considering the other issues presented by the pleadings and evidence "to be unnecessary, immaterial, and irrelevant, declines to decide the same," and final decree was thereupon rendered by said chancery court declaring the lien of said taxes upon the property in controversy a superior lien and enforcing the said lien for said taxes against the said property and decreeing a sale

thereof to pay the same, but not rendering any personal decree therein against appellant and Yazoo and Mississippi Valley Railroad Company except for costs of suit; that thereafter said defendants sued out an appeal from said decree, returnable to the March term, 1900, of the supreme court of Mississippi, and said appeal is still pending and undetermined, and the said decree still stands in full force and effect, unmodified, unreversed, or unaltered, and the said Wirt Adams and said State Railroad Commission pleads said proceeding and decree of said chancery court in said cause numbered 1681 as *res adjudicata* and a bar to the further prosecution of the appeal in this cause, and prays that said appeal may be dismissed.

WIRT ADAMS.

Sworn to and subscribed before me this March 2, 1900.

[SEAL.] L. B. MOSELEY,
Clerk of the Circuit Court of the United States for the Southern District of Mississippi.

[Endorsed:] File No., 17,433. Supreme Court U. S., October term, 1899. Term No., 319. The Illinois Central R. R. Co., appellant, *vs.* Wirt Adams, State revenue agent, *et al.* Affidavit of Wirt Adams setting up the decree of the State court subsequent to this appeal as *res adjudicata*. Filed March 7, 1900.